claimed inconsistency. Thus, in the very text that Adams cites to support its claimed inconsistency, Parker was asked and answered the following question:

> Mr. Cole: So your testimony then is that the amendment to the to the Dallas Application, which appears at Exhibit 55, page 3, was not intended to include within its scope the San Bernardino application?
>
> Am I hearing that correctly?
>
> Mr. Parker: ***That is not what I said.*** I thought I answered your previous question. Now you are rewriting my answer to fit with *something*[23] else you wanted. Why don't you just give me the question and I'll answer it instead of asking me what I meant.

[Parker Testimony, Tr. 1986:13-22 (emphasis added)] Thereafter, Mr. Cole sought to confirm his (incorrect) interpretation of Parker's testimony and, after relaying a foundation, once again asked:

> Mr. Cole: Did you understand when the FCC *contacted*[24] you or your representatives and asked for further information about character issues which may or may not have been raised against applications in your Dallas assignment application, did you understand that the staff was not interested in the San Bernardino proceeding?
>
> Mr. Parker: ***No, I don't think I said that.*** I didn't say they weren't interested.

[Parker Testimony, Tr. 1988:22-1889:4 (emphasis added)]

109. Later, Adams resumed questioning on this issue:

> Mr. Cole: When you signed the amendment, did you understand the amendment to include San Bernardino or not to include San Bernardino?

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23 Errata - the original transcription reads "someone."

24 Errata - the original transcription reads "contracted."

Mr. Parker: I don't know that I focused on it. As far as I'm concerned, it included everything that was asked for. If that was San Bernardino, then yes, it would have included that as well.

Q: So, is the statement in your amendment on Exhibit 55, page 3, that no character issues had been added or requested against those applicants when those applications were dismissed, was that accurate with respect to San Bernardino?

A: Certainly in terms that they had been resolved one way or the other, yes.

[Parker Testimony, Tr. 2031:4-17]

110. The transcript clearly reflects that, far from testifying that the Dallas Amendment was not intended to include the Religious Broadcasting decision, Parker adamantly denied that to be the case. Despite these clear denials, the Bureau, apparently still uncertain of its understanding of Parker's testimony, revisited the issue in its examination:

Mr. Shook: Now, what I would like to have clarified because this may be just a problem with what I heard as opposed to a problem with what you meant to testify, when you go to page J-3, which is the statement -- a statement that is dated October 27, 1992, and which you signed, I want you to focus on the very last sentence of that statement.

Do you see it?

Mr. Parker: Yes.

Q: Now, was that statement meant to include or not include the San Bernardino application?

A: Okay, I -- I believe that in 1992, when I signed this, and, you know, we spent a lot of time talking today, but it was based really on knowledge I have now, but I believe on 1992 this was an amendment that did not replace number -- the response in [Dallas Application Exhibit] three. It was an amendment that added to it, and it was my understanding in 1992, one, that I outlined what the Commission -- this disclosure outline what the Commission had done with regard to San Bernardino, and it was clearly my understanding

that any issues had been resolved and were gone; and that when I signed this, that I was signing an accurate statement, and that ***it did include the San Bernardino case.***

Q: So in terms of what you meant to tell the Commission, you meant to tell the Commission that this sentence, the very last sentence that we are focusing on, did include San Bernardino?

A: ***Right***, but it didn't say -- it did not say that I'm correcting what was said [in Dallas Application Exhibit Three]. It added to it. And what is said here is there was a real party in interest issue. In other words, it was disclosed, and what I believe to be that it was limited; you know, it explains the limiting of it, and I believe that what is said here is accurate -- was my understanding it was an accurate statement ***that included San Bernardino.***

[Parker Testimony, Tr. 2064:3-2065:11; see also 2065:12-24.]

111. Mr. Parker testified consistently, despite Adams' efforts to mischaracterize his testimony, that the Dallas Amendment encompassed the Religious Broadcasting decision; any claim otherwise is contrary to the record.

3. Conclusion.

112. The record reflects a complete absence of deceptive intent by Mr. Parker which might support a misrepresentation / lack of candor finding against him. In particular, the representations, including the Mt. Baker and Religious Broadcasting descriptions and the Dallas Amendment are fully responsive, provide all the information requested, and are consistent with all the Commission's requirements that can be clearly identified to an ascertainable certainty. Moreover, each of these representations were made in reasonable, good faith, reliance upon the advice of counsel, which, consistent with the Commission's past practice, policy, and precedent, precludes a misrepresentation / lack of candor finding.

113. Adams' arguments, which depend in large part upon unsupported conjecture, hyperbole, mischaracterized testimony and evidence, and the claim that both Parker and Mr. Wadlow testified falsely, do not compel a contrary conclusion.

C. Abuse of Process Issue Against Adams - Phase III.

114. In its Proposed Findings and Conclusions, Adams concludes that it did not abuse the Commission's comparative renewal process because it "did not file its application for the purpose of entering onto any settlement, nor has Adams at any time . . . participated in any discussions concerning any settlement in connection with its application." (Adams' Brief, ¶ 507 (parenthetical and footnote omitted).) Adams also asserts that it "undertook the preparation of its application diligently." (Id., ¶ 498.)

115. In contrast, the Bureau finds that "there are circumstances that appear to indicate the Adams did not have a *bona fide* intent to build and operate a station in Reading." (Bureau's Brief, ¶ 121.) The Bureau also finds that "[a]bsent countervailing factors, one could view Adams' application as so ill-conceived that Adams could not seriously have filed for the purpose of owning and operating a television station in Reading. (Id., ¶ 122.) In spite of the lack of bona fide intent or diligent preparation, the Bureau nevertheless concludes that Adams' application was not filed in abuse of the Commission's process because Adams knew that the Commission's rules did not allow "for profit" settlements, Adams believed that a home shopping format might not support a renewal expectancy; and because WTVE(TV) was not listed in the local newspaper. (Id., ¶ 124.)

116. As demonstrated below, the record does not support these conclusions. Adams' claimed motivation for filing its application (including its "no settlement" claim) is, at best, without credibility and, at worst, false and misleading. Moreover, the remaining evidence of Adams' intent does not demonstrate that Adams was solely motivated by an interest in owning and operating Channel 51 in Reading, Pennsylvania, the sine qua non of a properly filed application.

1. Adams misstates the scope of the Phase III inquiry.

117. Adams' primary defense (and the Bureau's principal "countervailing factor") is the idea that, because Adams knew that the Commission's rules preclude "for profit" settlements, Adams could not have filed for the purpose of achieving such a settlement. (Adams' Brief, ¶ 457-458, 497; Bureau's Brief, ¶ 123.) In reaching that conclusion, however, both Adams and the Bureau inappropriately limit the abuse of process inquiry to a question about whether Adams filed its application for the purpose of obtaining a settlement. (Adams' Brief, ¶¶ 490-494; Bureau's Brief, ¶ 118)

118. While filing for the purpose of obtaining a settlement is, indeed, a form of abuse of process, the proper inquiry is not whether the application was filed for that limited purpose but whether the applicant, in this case Adams, had a bona fide intent to own and operate the broadcast television station applied for, here, Channel 51 in Reading, Pennsylvania. See WWOR-TV, Inc., 7 FCC Rcd ¶ 25; see also K.O. Communications, Inc., 14 FCC Rcd 8490, ¶ 23 (1998); Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing

Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process [hereinafter Prevention of Abuse of the Renewal Process], 4 FCC Rcd 4780, ¶¶ 11, 26. That inquiry was accurately described when the issue was designated. Memorandum Opinion and Order released March 6, 2000 (FCC 00M-19) ("whether the principals of Adams Communication Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television station at Reading, Pennsylvania").

119. As demonstrated in Reading's Proposed Findings and Conclusions, the record shows that Adams' claim that it filed its application with the intention of constructing and operating a television station in Reading, Pennsylvania, is, at best, without credibility and, at worst, false and misleading. (Reading's Brief, ¶¶ 193-213) In addition, the remaining evidence of Adams' intent is inconsistent with an interest in owning Channel 51 in Reading, Pennsylvania. (Id., ¶¶ 214-260.) Adams has, therefore, abused the Commission's comparative application process and its application should be dismissed.

2. Adams' diligence.

120. Adams asserts that its bona fides are demonstrated by the fact that it "undertook the preparation of its application diligently." (Adams' Brief, ¶¶ 498-501.) In contrast, the Bureau pronounced Adams' application to be so "ill-conceived" that, in the absence of countervailing factors, "Adams could not seriously have filed for the purpose of owning and operating a television station in Reading." (Bureau's

Brief, ¶ 122.) Consistent with the Bureau's finding, the record does not support a conclusion that Adams diligently prepared its application.

121. As a starting point, however, it should be noted that evidence of diligence (as compared to evidence of a *lack* of diligence) in the preparation of a comparative application provides little, if any, guidance for deciding whether the application was filed for a bona fide or an improper purpose. See Garden State Broadcasting L.P., 996 F.2d 386, 392-293 (D.C. Cir. 1993). Thus, in Garden State the applicant argued that "its hiring of an expert and its budget preparation indicate that its filing was proper." Id. The court found that the evidence of the applicant's preparations was unpersuasive because such preparations would have been expected in any case -- i.e., whether the application was proper or abusive. Specifically, the court found that "[a] party seeking a license would pursue this information but so would a party seeking only settlement. Obtaining information about Channel 9 and preparing for its ownership strengthened Garden State's application and allowed it to act from a position of strength in settlement negotiations." Id.

122. On the other hand, while evidence of diligent preparation does not establish that the application was filed for a proper purpose, the *lack* of diligence *is* probative of an *improper* purpose. In that respect, the evidence Adams relies on to demonstrate its diligence shows only that Adams put forth just enough effort to satisfy the bare minimum application requirements and that, thereafter, Adams left

the matter to flounder. Such minimal "diligence" is inconsistent with a bona fide intent to own and operate a broadcast television station in Reading, Pennsylvania.

123. To demonstrate its diligence, Adams relies on claims that it obtained reasonable assurances of financing[25] and site availability and that it made "extensive efforts" and "spent considerable time" researching WTVE(TV). (Adams' Brief, ¶¶ 499-501.) As demonstrated below, the record does not support Adams' claims.

a. Adams' "site availability" claim.

124. Adams asserts that "its efforts to obtain assurance of the availability of its proposed transmitter site went *considerably* farther than the Commission's policies and precedent require." (Adams' Brief, ¶ 498) To support that assertion, Adams relies on the finding that it reached an understanding concerning the availability of the site prior to filing its application and then "proceeded after its application was filed to finalize its arrangements relative to the tower site and to enter into a formal lease and option arrangement with the site owner." (Id., ¶ 467.)

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[25] Throughout these proceedings, the Presiding Judge limited inquiry and discovery of Adams' claim of reasonable assurance of financing on the ground that such evidence was irrelevant to the abuse of process issue. See, e.g., Order, FCC 00M-29 (released May 5, 2000) (denying Reading's request to take discovery of representatives of the American National Bank & Trust Co. of Chicago, Illinois, on the grounds that "evidence on a loan commitment is not found to be relevant to the abuse of process issues.") Reading submits, therefore, that Adams' claim of reasonable assurance of financing be rejected as irrelevant to the abuse of process issue.

125. Contrary to Adams' claims, however, it had *no* agreement concerning the availability of the site prior to filing its application and, in fact, *still* had no agreement concerning the use of the transmitter site more than two years after the application was filed. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74) (advising Adams that "[a]t this point, we have no agreement whatsoever regarding this site.")] Nor did Adams contest Conestoga's assertion that there was no agreement. Instead, Gilbert, on behalf of Adams, responded: "Please forward me an executed copy of the Restated Option Agreement and License/Lease Agreement with the appropriate check and we can finally be on our way after all the many, many years." [Adams Letter dated August 21, 1996 (Reading Ex. 75)]

126. Moreover, in claiming that it had an agreement for the use of the transmitter site, Adams omits the fact that its use of the site is contingent on obtaining proper zoning permits to construct an additional building or expand the existing transmitter structure. [Conestoga Letter dated August 8, 1996 (Reading Ex. 74)] Adams acknowledges this contingency, but there is no evidence that Adams has addressed the contingency in any way. [Adams Letter dated August 21, 1996 (Reading Ex. 75) ("I am totally aware of the obligations stated in your letter of August 8, 1996. . . .")]

127. Adams also claims to have "*proceeded*" to finalize its arrangements after its application was filed. In that regard, however, Adams neglects to mention that it allowed the issue to languish in limbo for over two years and only "proceeded" to finalize arrangements after the site owner forced Adams' hand.

[Conestoga Letter dated August 8, 1996 (Reading Ex. 74); Adams Letter dated August 21, 1996 (Reading Ex. 75); Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3); Option Agreement (Adams Ex. 69)]

128. Finally, Adams completely omits the fact that it allowed the site option to lapse and only sought its renewal when the matter became apparent after Conestoga produced its file in response to Reading's subpoena. [Option Agreement, ¶ 1(A) (Adams Ex. 69 at 2); Adams Letter dated December 20, 1996, and Adams Check No. 1036 (Adams Ex. 71 at 1 and 3); Gilbert Testimony, Tr. 2535:18-24; Adams Check No. 1080 (Reading Ex. 76)]

129. Adams' lack of diligence in waiting more than two years before formalizing its right to use the Conestoga transmitter tower and in subsequently allowing that right to lapse is inconsistent with a bona fide intent to own and operate a television station in Reading, Pennsylvania. In fact, if Adams were sincere in its proposal to own and operate Channel 51, it would have made certain that it had and maintained the right to use the proposed transmitter site.

b. Adams' "financing" claim.

130. Adams also claims that its diligent preparations are demonstrated by the fact that it obtained "appropriate assurances of financing."[26] (Adams' Brief, ¶

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[26] This response is offered in the event that the Presiding Judge does not reject, as irrelevant, Adams' reasonable assurance of financing claim. (See supra note __.) In that event, however, Reading notes that, due to the limitation on discovery

(footnote continues)

498.) A reasonable assurance of financing, however, is required of all applicants and would have had to be obtained regardless of Adams' intentions. Thus, the fact that Adams' may have done what was minimally required to prepare its application is not probative that the application was properly motivated.

131. In contrast, that Adams' claim of "reasonable assurance of financing" is, at best, questionable, *is* probative that Adams' application was *not* properly motivated. Thus, the bank letter (Adams Ex. 72) appears to be, at best, a classic "Swiss cheese" letter. [June 23, 1994, Letter from American National Bank and Trust Company of Chicago (Adams Ex. 72) (making any loan conditional upon subsequent satisfaction of "all customary credit criteria and policies of [the Bank . . . upon submission of] a specific loan request to [Bank] for a formal lending commitment")] See Dutchess Communications Corp., 101 FCC 2d 243, ¶ 6, n.11 (Rev. Bd. 1985).

132. Far from demonstrating Adams' diligent preparation of its application, Adams' evidence of reasonable assurance of financing is, at best, questionable.

c. Adams' "Research" claim.

133. Finally, Adams' attempts to demonstrate its diligence by asserting that it made "extensive efforts" and "spent considerable time" researching WTVE(TV).

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relating to this issue, there is insufficient evidence upon which to base a conclusion, one way or the other, that Adams actually obtained "reasonable assurance" consistent with Commission policy and precedent. In that regard, the only evidence available is the bank letter (Adams' Ex. 72). As demonstrated in the text, however, Adams' claim that the bank letter evidences "reasonable assurance" is, itself, questionable.

(Adams' Brief, ¶¶ 499-501.) According to Adams, such research efforts and time consist of "a number" of trips to Reading by Gilbert and the videotaping done by Mr. Sherwood. (Id.) The record shows, however, that far from being "extensive" and "considerable," Adams' efforts and time were so minimal that Adams actually obtained *no* understanding or information concerning WTVE(TV). Adams' cursory and superficial "research" of WTVE(TV) does not support Adams' claim of diligent preparation.

i. Gilbert's trips.

134. In support of its claim of diligent preparation, Adams relies on the facts that "Gilbert traveled to Reading a number of times," that he "spoke with 30-40 people there, including a representative of the Reading *Eagle*," and that "[h]e attempted to view the station's programming in a restaurant and bar which had television sets, but the station could not be received on those sets." (Adams' Brief, ¶ 469.)

135. As the Bureau aptly points out, "Mr. Gilbert was the only Adams' principal ever to travel to Reading to determine whether WTVE(TV) might have served the community's interests, and, even then, *he did not establish with any certainty or specificity when and how often he went there.* (Bureau's Brief, ¶ 122 (emphasis added).) At best, the record shows only that, between February and June of 1994, Gilbert made 3 or 4 trips to the Reading area (not necessarily to Reading itself on all the trips, however many there were). [Gilbert Testimony, Tr. 2475:21-

2476:11, 2476:19-24, 2478:15-17, 2538:7-14] Thus, contrary to Adams' assertion, even at best, the record does not reflect "numerous" trips to Reading.

136. "Likewise, although Mr. Gilbert claimed to have interviewed 30-40 people in the Reading area about WTVE(TV), he produced no documents showing who he talked to and what they said." (Bureau's Brief, ¶ 122.) While this lack of evidentiary support, itself, makes the value of the "interviews" questionable, such evidence as does exist further diminishes its value as a means of researching WTVE(TV).

137. Thus, the record shows that if any interviews were conducted, they were all conducted at business establishments, including malls and restaurants, not at people's homes; accordingly there is no indication that any of the people interviewed actually lived in the WTVE(TV) viewing area. [Gilbert Testimony, Tr. 2538:18-24] In addition, because the pool of alleged interviewees was comprised of those people who could and did use retail-shopping outlets, it would necessarily include those people least likely to use or need "home shopping" services. Moreover, even if they were all from the relevant viewing area, the number of people surveyed represents less than .00001 (1/1000th of a percent) of the population in Adams' proposed service area -- hardly a statistically significant amount. [See Adams' Application (Reading Ex. 10 at 30) (indicating a population within the proposed service area of 4,066,085 according to the 1990 census)]

138. Finally, Adams demonstrates how truly superficial Adams' "research" was by relying on the claim that Gilbert "attempted to view the station's

programming in a restaurant and bar which had television sets, but the station could not be received on those sets". The fact that Gilbert apparently made more than one trip to Reading or the Reading area all the way from Chicago, a trip he admits is difficult, and his best effort to view WTVE(TV) was to ask a restaurant and bar to put WTVE(TV) on for him, is hardly illustrative of an "extensive effort."

139. Not only is Adams' "research" claim unsupported by Adams' own evidence of what it did do to research of WTVE(TV), it is belied by the evidence of what Adams did *not* do to research WTVE(TV). Thus, although Adams understood that every television station has to make its public inspection files available to interested parties, Adams did not bother to review WTVE(TV)'s public inspection file prior to filing its application. [Gilbert Testimony, Tr. 1011:18-21, 2541:16-18] Nor did Adams retain an expert or consultant to evaluate WTVE(TV)'s programming.[27] [Id., Tr. 2540:19-22]

ii. The Sherwood tapes.

140. As additional support for its claim of diligent preparation, Adams relies on the videotaping performed by Paul Sherwood and, in particular, Mr. Sherwood's "extensive" notes and reports and Gilbert's review of the videotapes themselves. (Adams' Brief, ¶¶ 470-474, 501.) Contrary to Adams' claim, however, the evidence relevant to Mr. Sherwood's videotaping does not demonstrate Adams' diligence but, rather, the *lack* thereof. Significantly, in that regard, the videotapes

were not even of WTVE(TV), a fact which Gilbert now concedes is "painfully evident." [Gilbert Testimony, Tr. 2477:14-2478:12] Nor did Adams even make a "nice try." Thus, as the Bureau indicates, Adams' efforts to have WTVE(TV) recorded were so cursory that they managed to hire "someone who did not even have access to WTVE(TV)'s programming" and Gilbert's review of the videotapes was so superficial that he "was not even aware until September 1999 that something other than WTVE(TV) had been taped." (See Bureau's Brief, ¶ 122.) Adams' reliance on the Sherwood taping project to support its claim of diligent preparation is misplaced.

141. At the outset, it should be noted that Mr. Sherwood, was, and remains today, a computer systems consultant. [Sherwood Testimony, Tr. 2137:11-16] He is not, and never has been, a professional media consultant, nor does he have any expertise in analyzing or evaluating the content of television programming or the public service performance of television stations. [Sherwood Testimony, Tr. 2149:22-2150:14] This fact undermines Adams' claim to having made an extensive effort to research WTVE(TV) and it also undermines the value of Adams' reliance on Mr. Sherwood's notes and reports (even if he had taped the right channel).

142. In addition to being of questionable value as a result of Mr. Sherwood's lack of expertise, the notes and reports are themselves of little substantive value (even if they were of WTVE(TV), which they are not). Thus, contrary to Adams'

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[27] Even the plainly abusive Garden State applicant did at least that much. See Garden State, 996 F.2d at 388.

assertion, the notes of the public service content of the videotapes are not "extensive" but merely identify where on the tape (by approximate counter number and time) the public service announcements appear. [Adams Exs. 76, 77, 87]

143. Nor does the record support Adams' reliance on Gilbert's telephone conversations with Mr. Sherwood. In the first place, Gilbert's testimony concerning the extent and scope of those "conversations" lacks credibility. Thus Gilbert testified that he spoke with Mr. Sherwood on a "daily" basis but later testified that, based solely on his review of Mr. Sherwood's deposition, he really only spoke to him "a couple of times a week." [Compare Gilbert Testimony, Tr. 1069:13-21 with Tr. 2492:10-2493 and Tr. 2549:13-20.] In contrast, Mr. Sherwood testified that he spoke to Gilbert only once after having done the initial June 1, 1994 recording and then only once during the process of making the remaining videotapes. [Sherwood Testimony, Tr. 2149:2-16] Finally, Adams' reliance on Mr. Sherwood's reports is undermined by Mr. Sherwood's limited qualifications to provide any substantive insight into the content of the programming being taped.

144. Adams' reliance on Gilbert's review of the videotapes is likewise unavailing. In fact, there is a real question as to whether Gilbert even reviewed the videotapes at all, let alone that he performed any sort of attentive review. (See Reading's Brief, ¶¶ 226-242.) Thus, the Bureau found that the "review of the programming and resultant tapes was so cursory that Mr. Gilbert was not even aware until September 1999 that something other than WTVE(TV) had been taped." (Bureaus' Brief, ¶ 122.)

145. In sum, Adams' claimed "efforts" to research WTVE(TV) are, at best, cursory and superficial and do not support its claim of diligent preparation.

3. The settlement issue.

146. As shown above, filing a comparative renewal application for the purpose of obtaining a settlement is but one form of an abuse of process. In that regard, the proper inquiry is whether the application was filed for the purpose of owning and operating the broadcast station applied for. Id. Thus, Adams' protestation that it did not file for the purpose of obtaining a settlement, which is but one example of an abusive intent, does not establish that the application was properly motivated. As demonstrated in Reading's Proposed Findings and Conclusions, Adams did not file its application for the purpose of owning and operating Channel 51 in Reading, Pennsylvania, and, therefore, the filing of the application was an abuse of process. (Reading's Brief, ¶¶ 189-267.) That being said, as demonstrated below, the record does not support Adams' claim that it did not file its application to obtain a settlement.

147. Adams' conclusion that it did not file its application for the purpose of obtaining a settlement, depends on three incorrect findings: (1) that the Monroe settlement "is of no consequence" (Adams' Brief, ¶ 496); (2) that Adams believed, when it filed its application, that the Commission would *never* approve a "for profit" settlement (Adams' Brief, ¶ 497); and (3) that Adams did not engage in any settlement discussions because it had no interest in settlement (Adams' Brief, ¶¶ 502-506).

a. The Monroe settlement.

148. Adams asserts that the fact that its principals were also principals of Monroe "is of no consequence" because the Monroe application was filed before the Commission adopted its limits on settlements and because that application was not filed for the purpose of obtaining a settlement. (Adams' Brief, ¶ 496.) In this regard, Adams attempts to misdirect the relevance of the Monroe settlement. Thus, while Monroe may not have filed its application to obtain a settlement,[28] the close relationship of Monroe and Adams together with the contemporaneous timing of the Monroe settlement and Adams' decision to pursue its "home shopping" challenge *is* probative of Adams' intent. See WWOR, 7 FCC Rcd 636, ¶¶ 25 ("Rather the circumstances readily lend themselves to the conclusion that Fetner was interested in receiving a settlement payoff. This is particularly so in light of the fact that the crucial meeting between Fetner, Cohen and Wells, leading to the formation of Garden State, occurred almost immediately after these same three individuals received substantial payoffs from the Mainstream settlement."); Garden State, 996 F.2d at 391.

149. Here, the record demonstrates that all but one of the Adams principals were also principals in Monroe [Gilbert Testimony, Tr. 996:18-23], which agreed to dismiss its application in exchange for more than $17,000,000. [Joint Request for

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[28] The motivation behind the Monroe settlement, while not at issue here, is not at all clear in light of the questionable reasons Monroe abandoned Channel 44 after successfully pursuing a decade of litigation and with only Video 44's appeal left to contend with. (See Reading's Brief, ¶¶ 77-82.)

Approval of Settlement Agreement, Attachment 1, ¶ 5 (Reading Ex. 19 at 12-13); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2)] and that almost immediately after receiving the second of two settlement payments, the Monroe principals decided to pursue a comparative renewal challenge to a television station broadcasting "home shopping" programming [Gilbert Testimony, Tr. 2473:15-2474:7]. Thus, as in Garden State, "the circumstances readily lend themselves to the conclusion that [Gilbert] was interested in receiving a settlement payoff. This is particularly so in light of the fact that the [decision to pursue a comparative renewal challenge] leading to the formation of [Adams], occurred almost immediately after [the same principals] received substantial payoffs from the [Monroe] settlement." See WWOR, 7 FCC Rcd 636, ¶¶ 25.

b. Adams' view of the possibility of settlement.

150. To support their conclusion that Adams did not file to achieve a settlement, both Adams and the Bureau rely on the idea that "when the application was filed, [Adams] understood that settlement for monetary consideration was not possible until after the issuance of an initial decision [and that] even then, the rules only allowed for the recovery of expenses." (Bureau's Brief, ¶ 123; see also Adams' Brief, ¶ 497.) As demonstrated below, that argument is unavailing.

151. In the first place, it does not necessarily follow that, because Adams was aware that the Commission's rules concerning settlements had changed prior to the time it filed its application, Adams understood that it could not obtain a settlement *despite* the changed rules. Thus, the very memorandum upon which

Adams relies as its evidence that it knew the settlement rules had changed itself relies on Prevention of Abuse of the Renewal Process, 4 FCC Rcd 4780 (1989), recon. denied, 5 FCC Rcd 3902 (1990). There, despite its adoption of the limits on settlements in comparative renewal proceedings, the Commission made clear that, where it was comfortable that the potential for abuse was minimized, it would "continue to encourage settlements as a means to efficiently terminate license renewal proceedings." 4 FCC Rcd 4780, ¶ 32. The Commission confirmed in 1990 that renewal applicants "are always free to seek waivers of the Commission's rules." 5 FCC Rcd 3902, ¶ 26. Moreover, Gilbert himself concedes that he understood that the Commission's rules concerning settlement could be waived. [Gilbert Decl., ¶¶ 7-8 (Reading Ex. 24) ("As an attorney, I am well aware that an agency's rules or policies may normally be waived or modified upon a showing of good cause.")] Thus, because Adams knew that the settlement rules could be waived, it cannot be concluded that merely because it knew of those rules it could not possibly have had an intent to obtain a settlement.

152. Adams' and the Bureau's argument also overlooks Adams' fee agreement with Bechtel & Cole, which specifically contemplates a bonus to the law firm either for a victory or for a settlement on "economically favorable" terms, including, but not limited to, a settlement for expenses. [Adams' Fee Agreement (Reading Ex. 21)] Although that letter was signed on June 30, 1999, it memorialized an existing oral agreement that had been reached in 1993. [Gilbert Testimony, Tr. 1019:19-1020:19] Obviously, both Adams and its counsel, from the

beginning, viewed a settlement on "economically favorable" terms to be a successful outcome that would generate a bonus for the law firm.

153. Notwithstanding its rules, the Commission has indeed allowed settlements without regard to whether the amount to be paid to the dismissing challenger exceeded that applicant's expenses. See, e.g., Trinity Broadcasting of Florida, Inc., 14 FCC Rcd 20,518, ¶ 12-14; EZ Communications, Inc., 12 FCC Rcd 3307 (1997); FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, 10 FCC Rcd 12182 (1995). In addition, experienced communications counsel could be expected to suggest creative settlement arrangements (e.g., a "gray knight" settlement providing for a post-grant payment upon exercise of an option) in the event a waiver were not available. See, e.g., Frank Digesu, Sr., 9 FCC Rcd 7866 (Rev. Bd. 1994); Lamar Communications, Inc., 6 FCC Rcd 7022 (OGC 1991); Gifford Orion Broadcasting, Ltd., 9 FCC Rcd 314 (Assoc. Gen. Counsel 1993); David A. Davila, Nicasio O. Flores and Maria Norma Flores, 5 FCC Rcd 5222 (MMB 1990). It is hardly speculative to conclude that Adams' principals and counsel can be charged with knowledge of such cases, particularly those that were released by the Commission when the Monroe application was pending.

154. Yet, even if Adams did not know the settlement rules could be waived or gotten around (which they did), it still does not follow that Adams' application was filed for the sole purpose of owning and operating the station. In that regard, Adams previously testified that it was motivated by an interest in obtaining a

precedent against "home shopping" programming. [Gilbert Decl., ¶¶ 7-11 (Reading Ex. 24); November 22, 1999 Opposition of Adams Communications Corporation to Reading's Motion to Dismiss Adams' Application, or Alternatively, to Enlarge Issues (Abuse of Process) at 8; Gilbert Testimony, Tr. 1114:25-1115:13, 1118:2-1119:4, 1124:20-25, 1132:7-20] Thus, despite the rules against "for profit" settlements, Adams could still pursue its home shopping challenge through the initial decision, obtain a ruling that, for example, "home shopping" programming does not support a renewal expectancy (and thereby achieve its asserted policy goal) and, thereafter, agree to dismiss its application solely in exchange for a payment of its reasonable expenses, *all without ever intending to own or operate the station.* Such motivation would be just as improper as seeking a settlement because it is *not* driven by the purpose of owning and operating Channel 51 in Reading, Pennsylvania.

c. Adams' participation in settlement discussions.

155. Adams asserts that there is no evidence that it was "involved in ***any*** settlement-related activities at all" but that "[a]t most, the evidence reflects that Adams was contacted on three separate occasions concerning some possible settlement." (Adams' Brief, ¶¶ 502-503 (emphasis original), 507 (asserting "nor has Adams at any time participated in any discussions concerning any settlement in connection with its application" (internal parenthetical omitted).)[29] Adams then

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[29] That Adams draws a distinction between "settlement-related activities," of which it claims there is no evidence (Adams' Brief, ¶ 502), "contacts ... concerning

(footnote continues)

attempts to cast these three settlement "contacts" as evidence that Adams was not interested in settlement and, therefore, could not have filed its application for that purpose. As demonstrated below, the record does not support that conclusion.

156. The first "contact" relates to a call from Parker which Adams claims Gilbert rejected because Adams had no interest in settlement. (Adams' Brief, ¶ 503.) "The second contact came in a call from an unidentified man asking Mr. Gilbert if Adams wanted to settle." (Adams' Brief, ¶ 504.) Again, Adams claims that it rejected this overture because it was not interested in settlement. (Id.) Gilbert, however, did *not* "reject" these offers *because* Adams was not interested in settlement *but* because he thought Parker was somehow trying to trick him. Thus, Gilbert testified that he suspected that the second caller was a "stalking horse for Parker" and that the call was a "subterfuge for Parker." [Gilbert Testimony, Tr. 1103:2-7, 1104:11-16][30]

157. Adams' claim that it rejected these first two overtures because Adams was not interested in settlement is also belied by the fact that Adams did not "reject" the same inquiry when it came from someone who was not Parker or his

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some possible settlement," of which it admits there were three (Id., ¶ 503), and "discussions concerning any settlement," of which it claims there were none (Id., ¶ 507), only serves to highlight its lack of candor and questionable credibility.

30 Perhaps Gilbert's paranoia stems from his knowledge that Adams filed its application with the intent to obtain a settlement combined with his understanding that, if proved, such intent would be disqualifying as an abuse of process. Gilbert's caginess with respect to evidence concerning settlement was demonstrated by Adams' deceitful testimony about its dealings with Telemundo. (See Reading's Motion to Enlarge Issues (Misrepresentation / Lack of Candor), ¶¶ 14-24.)

"stalking horse." Thus, in the third settlement contact, Adams was approached by Anne Swanson, Esq., on behalf of Telemundo. (Adams' Brief, ¶ 505-506.) As demonstrated below, Adams did not "reject" Telemundo's overture out of hand as it did those it believed to be from Reading, but, rather, embraced it.

158. Adams, however, attempts to diminish Gilbert's dealings with Telemundo by suggesting that such dealings really didn't involve settlement because Ms. Swanson "was not in a position to make any settlement offer, and she did not in fact make any settlement offer," by asserting that "Gilbert did not view that participation as engaging in settlement discussions," and by claiming that Gilbert never demonstrated any interest in pursuing settlement." (Id., ¶ 505.) The record, however, tells a different story.

159. The record clearly relates that, from the very beginning, Ms. Swanson made it clear that her purpose was to attempt to broker a settlement. [Swanson Testimony, Tr. 2215:8-2217:6, 22119:12-2222:13, 2301:16-2302:1; Ms. Swanson's handwritten notes ("Swanson Notes") (Reading Ex. 52 at 4-5)] Thus, when she first contacted Mr. Cole, as counsel for Adams, she asked him about Adams' level of interest in settlement and was informed that Gilbert liked to do his own negotiating. [Swanson Testimony, Tr. 2215:11-17, 2219:3-24; Swanson Notes (Reading Ex. 52 at 4)] Later that day, after Mr. Cole had had a chance to confer with Gilbert, Mr. Cole advised Ms. Swanson that Adams would not say "no" to settlement. [Swanson Testimony, Tr. 2219:18-2221:8; Swanson Notes (Reading Ex. 52 at 5)]

160. Later that same day, Ms. Swanson spoke directly with Gilbert and asked him for a settlement figure. [Swanson Testimony, Tr. 2219:18-2220:15, 2222:14-2224:18, 2302:2-14; Dow Lohnes & Albertson Telephone Report for April 30, 1999 (Reading Ex. 51 at 2)] When Gilbert responded that he could not give her a figure because Adams had not valued the station, it was decided to conduct an appraisal of the station. [Swanson Testimony, Tr. 2225:18-2226:9; Swanson Notes (Reading Ex. 52 at 5)] To that end, Gilbert committed Adams to pay one-third of the expense of the appraisal. [Swanson Testimony, Tr. 2223:12-2224:18, 2230:17-2231:4; Swanson Notes (Reading Ex. 52 at 5); Letter from Gilbert to Swanson dated April 22, 1999 (Reading Ex. 57)] Gilbert also indicated to Ms. Swanson that Adams would be reasonable with respect to a possible settlement. [Swanson Notes (Reading Ex. 52 at 5)]

161. Contrary to Adams' claim, these facts clearly demonstrate that Adams understood from the very first contact that Ms. Swanson's interest on behalf of Telemundo was to broker a settlement of the WTVE(TV) challenge, which would necessarily include Adams. Gilbert's statements that Adams would not say "no" and that it would be reasonable with respect to settlement, as well as Gilbert's commitment to share the cost of the appraisal in order to facilitate settlement negotiations, also contradict Adams' assertion that Gilbert never demonstrated any interest in settlement. In fact, Adams' interest in settlement was further demonstrated in Gilbert's representation to Ms. Swanson, after the appraisal was

complete, that Adams was only interested in *serious* settlement negotiations. [Swanson Testimony, Tr. 2273:9-20; Swanson Notes (Reading Ex. 52 at 11)]

162. Finally, the fact that Adams sincerely pursued settlement with Telemundo is demonstrated by the trouble to which Adams went to conceal those dealings from Reading and the Commission. (See Reading's Motion to Enlarge Issues (Misrepresentation / Lack of Candor at 14-27.) Thus, at his October 1999 deposition, Gilbert specifically denied any knowledge of a potential settlement coming from anyone other than Parker and some unknown person. [Gilbert Depo., 21:7-24:17] Adams continued that ruse in its opposition to Reading's motion to add the abuse of process issue [see Gilbert Decl., ¶ 9 (Reading Ex. 24)] and in Gilbert's Phase I testimony in January, 2000 [Gilbert Testimony, Tr. at 1099:2-7, 1101:22-1102:9 (including the following exchange: "The Court: What knowledge did you have of a possible settlement opportunity or settlement proposal coming from somebody other than Parker at this time? Any knowledge at all that you had? Mr. Gilbert: None. Q: Absolutely none whatsoever? Is that your testimony? A: That's my testimony.")]. Given the extent of Gilbert's dealings with Ms. Swanson and the fact that those discussions took place between one and four months before his October deposition, it cannot reasonably be claimed that Gilbert innocently forgot those dealings. Rather, he purposefully concealed them precisely because they were sincere; had they not been so, there would have been no reason to conceal them.

163. The record simply does not support Adams' claim that it was merely a disinterested bystander in its dealings with Telemundo. To the contrary, Adams

was clearly an interested and active participant. Thus, the record shows that: Ms. Swanson's purpose in contacting Adams was the pursuit of a settlement on behalf of Telemundo; Adams understood that it was participating in "settlement-related activities;" Adams was interested in pursuing settlement; and Adams demonstrated such interest to Ms. Swanson, going so far as to participate in obtaining a third-party appraisal of WTVE(TV).

164. Amazingly, after first concealing its dealings with Telemundo regarding programming in order to keep Reading from learning of Adams' settlement discussions with Telemundo,[31] Adams, now that the Telemundo settlement is "out of the bag," tries to rely on those programming dealings to demonstrate its lack of interest in settlement. (Adams' Brief, ¶ 506.) Considering that such expression of interest in an affiliation came only after settlement discussions with Telemundo had broken down, the sincerity of Adams' interest in affiliating is not at all clear. In any case, Adams' "interest" in an affiliation with

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[31] At his deposition in October, 1999, Gilbert unequivocally testified:

> Mr. Hutton: Have you ever had any discussions with Telemundo or any other programmer about providing programming to the station if your application is successful?
>
> Mr. Gilbert: No.

[Gilbert Depo., 22:20-23:2.] Gilbert gave the same unequivocal answer in January, 2000:

> Mr. Hutton: Has any representative of Adams ever had any discussions with any programmer about providing programming to the station in the event your application is successful?
>
> Mr. Gilbert: No.

(footnote continues)

Telemundo, coming as it does five years after the application was filed, is not probative of Adams' intention at the time it filed its application.[32] Thus, had Adams genuinely been interested in obtaining Spanish language programming for the station, it would have put that intent into motion long before 1999, particularly in light of its experience of having to abandon Channel 44 in Chicago due to the perceived unavailability of such programming. Moreover, the apparent reason that Telemundo refused to affiliate with Adams -- Telemundo's then existing affiliation with Reading -- no longer exists. There is, however, no evidence that Adams recommenced its affiliation efforts. Thus, the significance of Adams' alleged interest in affiliating with Telemundo with respect to Adams' motive for filing its application is questionable, at best.

4. Adams' application was not filed with a *bona fide* intent to own and operate a broadcast television station on channel 51 in Reading Pennsylvania.

165. While Adams' primary defense is its argument that the application was not filed to obtain a settlement (although, as shown above, the absence of one bad motive does not establish the absence of all bad motives nor does it prove the existence of a good motive), Adams does, almost in passing, suggest that its application was properly "motivated by its desire to obtain a low-cost television station while advancing the public interest." (Adams' Brief, ¶ 462.) As

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[Gilbert Testimony, Tr. 1107:11-14.]

[32] In contrast, Adams' post-filing interest in settlement, being consistent with Adams' pre-filing intent to pursue settlement, is probative of its pre-filing intent.

demonstrated in detail in Reading's Proposed Findings and Conclusions, Adams' stated reasons for filing its application are, at best, without credibility and, at worst, false and misleading. Nor does the remaining evidence of Adams' intent demonstrate a bona fide interest in owning and operating Channel 51 in Reading, Pennsylvania. (See Reading's Brief, ¶¶ 193-267) Because those issues have already been fully discussed in Reading's Brief, they will not be revisited here. However, to the extent that Adams attempts to rely on specific points to support its bona fides, those points are addressed below.

a. Adams' "desire to obtain a low-cost television station."

166. Adams asserts that it "was aware that, through the filing and successful prosecution of a 'comparative renewal' application, it could acquire a valuable television broadcast authorization for considerably less than the fair market value of the existing station." (Adams' Brief, ¶ 459.) In this regard, Adams conveniently equates "authorization" with the "station" itself. The cost of obtaining an "authorization," however, is not the same as the cost of acquiring the "station" and therefore does not equate to the "fair market value of the existing station." Nor is there any reason to believe that the cost of acquiring the "station" through the use of the comparative renewal process is any less (let alone "considerably less") than the cost of buying the station outright, particularly when one considers the risk of failure, the legal fees in prosecuting the contested application, and the years of station revenues lost to the applicant while the challenge is being pursued

(revenues it would have earned had the applicant purchased the station outright at the very beginning).

167. Certainly Adams' experience in Video 44 did not provide such insights -- Adams/Monroe spent a decade in litigation, acquired the "authorization" but, ultimately, was unable to operate the station. [Gilbert Testimony, Tr. 2516:24-2517:7; Fickinger Testimony, Tr. 2461:12-19] Thus, the only "awareness" Adams/Monroe could reasonably take away from its Video 44 experience is that the comparative renewal process is an expensive, lengthy, and uncertain process at the end of which the applicant still must acquire the station. Not coincidentally, Adams/Monroe also learned from its Video 44 experience that the comparative renewal process was a potentially lucrative investment because one might acquire a valuable "authorization" which could, itself, be negotiated without ever having to actually acquire or operate the station. Thus, all that can truly be said is that Adams "was aware that, through the filing and successful prosecution of a 'comparative renewal' application, it could acquire a valuable television broadcast authorization for considerably less than the [cost of prosecuting the application and very likely assign its right to that authorization for a substantial profit.]."

168. While the idea that the comparative renewal process provides a cheap way to acquire a television station is, at best, questionable as a general proposition, it is wholly unsupported in specific application here. Thus, when it undertook to challenge Reading's renewal, Adams did not know the value of the Channel 51 authorization or the fair market value of the station. Thus, Adams never sought to

appraise or value WTVE(TV) prior to filing its application. [Gilbert Testimony, Tr. at 1065:21-1066:9] Nor did Adams solicit a sales price from Reading, prior to filing its application. [Gilbert Testimony, Tr. 2541:19-25] Thus, there is simply no factual support for Adams' claim that it would be less expensive to acquire WTVE(TV) through the comparative renewal process rather than through outright purchase of the station.

169. As discussed in Reading's Brief, Adams claim that it undertook the comparative renewal process as a "low-cost" means of acquiring a valuable television station is also inconsistent with the facts that: Adams did not pursue its challenge against the most valuable property, but merely the first property to come up for renewal (see Reading's Brief, ¶ 204); Adams never attempted to purchase any station, anywhere (see Reading's Brief, ¶¶ 205-206); and Adams had a station, Channel 44, but gave it up without ever operating it (see Reading's Brief, ¶¶ 208-210).

b. Adams' desire to advance "the public interest."

170. Adams also asserts that it was motivated to pursue the comparative renewal application process as a means of "advancing the public interest." (Adams' Brief, ¶ 462.) In that regard, Adams asserts that it "recognized that the comparative renewal process afforded Adams the opportunity to provide a valuable public service by replacing 'home shopping' programming which, in Adams' view, was not providing locally-originated programming serving the local public interest." (Id., ¶ 460.) This assertion, however, fails to account for the fact that Adams never

sought to buy WTVE(TV), or any other "home shopping" station. [Gilbert Testimony,. Tr. 2541:19-2542:6]

171. Thus, if Adams were truly motivated by the philanthropic desire to replace "home shopping" with programming it felt better served the public interest, that goal could have been accomplished by purchasing a station and changing its programming (or even by just buying air-time on such stations). That precise issue was specifically addressed to Gilbert by the Presiding Judge in the January, 2000, Phase I hearing. [Gilbert Testimony, Tr. 1114:23-1115:10, 1118:6-1120:12] In response, Gilbert testified that simply buying out and replacing "home shopping" programming would not allow Adams' to achieve its goal of obtaining a Commission precedent against the public interest value of such programming. [Id.] In doing so, Gilbert made it clear that Adams had no particular interest in providing public service programming to Reading, Pennsylvania. [Gilbert Testimony, Tr. 1019:19-22] Rather Adams was seeking an FCC precedent against home shopping programming in general. [Id., Tr. 1118:21-1119:4] As discussed above, however, the use of the comparative renewal process to obtain a Commission precedent is, itself, an abuse of that process.

5. Conclusion

172. Adams' principal rationalization for why its application was not filed in abuse of the comparative renewal process is that it was not motivated by an intention to obtain a settlement. Obtaining a settlement, however, is but one form of abusive intent and its absence, therefore, demonstrates neither the absence of

other forms of abusive intent nor the existence of a proper intent. In that regard, the proper abuse of process inquiry is whether Adams filed its application with the bona fide intent to own and operate a broadcast television station in Reading, Pennsylvania.

173. Yet, even if the absence of an intent to obtain a settlement did demonstrate an intent to own and operate the station applied for, Adams' "proof" in support of its contention that it did not file to obtain a settlement is untenable. Adams' principal witness, Howard Gilbert, lacks credibility due to the numerous inconsistencies in his testimony. There is also substantial record evidence to the contrary. In that regard, Adams asserts that its connection with Monroe Communications and the concurrent timing of the Video 44 settlement and the commencement of Adams' "home shopping crusade" "is of no consequence." This conclusion is completely unsupported by my record evidence and is inconsistent with Commission precedent and common sense. Adams also claims that it could not have filed with the intent to obtain a settlement because it knew the Commission's rules precluded settlements. However, Adams' fee agreement with Bechtel & Cole expressly contemplates settlement, not only as a potential outcome, but one that would earn the law firm a substantial bonus. Likewise, Gilbert himself admits that he knew that the settlement rules could be waived.

174. Adams' stated motivation for filing its application, "its desire to obtain a low-cost television station while advancing the public interest," is, at best, without credibility and, at worst, false and misleading. In addition, the totality of the

evidence of Adams' intent does not demonstrate a primary interest in owning and operating Channel 51 in Reading, Pennsylvania. Adams' application was filed in abuse the Commission's comparative renewal process and should, therefore, be dismissed.

Respectfully submitted,

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October 23, 2000

CERTIFICATE OF SERVICE

I, Myra F. Powe, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on October 23, 2000, a copy of the foregoing READING BROADCASTING, INC.'S CONSOLIDATED RESPONSE TO THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF ADAMS COMMUNICATIONS CORPORATION AND THE ENFORCEMENT BUREAU was delivered by hand to the following:

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